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SUBJECT: CESR HOLDS HEARING ON MEDIATION OPTION

1. (U) SUMMARY: At a public hearing organized in Paris on November 21 by the Committee of European Securities Regulators (CESR), financial market participants aired differing opinions about how and whether CESR should institute a mediation procedure for national regulators. The idea is to not supplant EU or national authority, but to give regulators yet another route to EU-wide financial market integration. END SUMMARY

CESR SETS IN MOTION REGULATORY MEDIATION

2. (U) The Committee of European Securities Regulators (CESR) has set up a mediation task force, chaired by Manuel Conthe, Director General of the Spanish Financial Supervisory Authority, to consider whether mediation could strengthen the enforcement mechanisms of EU regulators. This type of mediation would be reserved for government officials to resolve possible cross-border conflicts. Besides inviting public comment, the task force held an open hearing in Paris on November 21. The hearing attracted representatives from major European issuers and industry associations.

3. (U) Conthe divided the discussion at the hearing in four parts: an analysis of the key feature of a possible mediation system; the scope of matters amenable to mediation; the role of market participants and the European Commission; and the possible procedural framework.

4. (U) Fabrice Demarigny, the Secretary General of CESR, took care to point out the limited scope of the proposed mediation system. It would only exist for EU member government regulators. Market participants and investors would have no access. It would only exist for what CESR describes as Level 3 matters: standards, guidelines, and recommendations, with the goal being to help promote a single market by regulatory convergence. It would be completely non-binding, and would not create or change any national or European law. Any matter requiring legal interpretation of EC directives would be referred to the European Commission. It would have three "gate-keepers," whose task would be to filter cases to keep it manageable.

PRIVATE SECTOR INPUT

5. (U) Opinions were divided about the wisdom of a mediation system. One business association representative questioned the utility of a non-binding procedure. Conthe explained that the expert group had looked at two different mediation concepts: facilitative (akin to the UK definition) and evaluative (closer to what we would call arbitration), and having decided on the latter, the group had opted to preserve national authority. A former financial services mediator argued that CESR would find it difficult to maintain confidentiality, and observed that the gatekeepers' filtering function indicated that CESR was not fond of the idea of mediation. Conthe answered that his goal is to create a perfect mediation method that regulators would never need to use.

6. (U) Several business representatives sought to pin down the role of the European Commission. An EC representative said the EC interest is to be informed of conflicting interpretations of law. While its legal opinions may not have the force of law, the EC could launch infringement proceedings in the European Court of Justice if needed.

7. (U) Other questions raised included the potential matters that would be subject to mediation, and how CESR would deal with transparency, particularly in getting privileged information to the market. Some participants wanted more time to consider whether market participants

might want access to the mediation proceedings, but Conthe indicated further consultations would depend on the written comments received (the deadline for comments is November 30).

COMMENT

18. (U) The idea that an arbitration-style mediation mechanism could lead to greater European financial market integration seems a bit counter-intuitive, and it is certainly a novel approach. CESR's purpose, of course, is to get regulators to agree among themselves, and it is possible that an additional tool like mediation could resolve some of the difficulties in implementing a single financial market.
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